

REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application. The claims have been amended to resolve the concerns expressed by the Examiner on pages 2-3 of the Office action. New claims 22-24 have been added; they are based on original claims 5, 6 and 1, respectively. No new matter has been added. Claims 17-21 have been cancelled without prejudice.

The claims have been rejected as obvious over McElwee and Sutherland. However, upon more careful consideration, it can be seen that the claims as now presented clearly define over these references.

In the Office action, the Examiner has referred to top flaps 22, 22', 23 and 23' of McElwee and flaps 64 of Sutherland. Other than the statement that it would be obvious to add known flaps to an existing container to improve this, no arguments have been provided for the specific combination and no elucidation has been provided as to why these flaps are the same as the flaps recited in claims 1 and 8.

To start with the first argument, a person skilled in the art concerned with developing new packaging will always try to limit the amount of material used in a package as well as the waste material, limiting both packaging cost and weight, which is important for e.g. transport. Both teach against adding flaps to existing packaging, especially since the existing packaging apparently is completely satisfying. Adding flaps of the present invention to McElwee or Sutherland would not be obvious, would not necessarily add to the packaging capacities, would add weight and would lead to more waste material. Accordingly, the well-established prior art would clearly teach away from any such adding of flaps.

McElwee is concerned with a package having a handle grip extending as a prolongation of a side wall, the top surface being flat and provided with a take out opening for removing the bottles. The handle grip extends upward. These aspects are some of the essential features of the McElwee packaging. The present invention points away from such packaging. These packages have no upstanding grip and have gripping means in the middle top portion, in two mutually overlapping top flaps (upper flaps of claim 1). Because of i.e. these overlapping flaps the package can be made of relatively thin cardboard and still be sufficiently strong to support the bottles or cans. For the same reason of strength and limited material the flaps 10A, 10B are connected to the flaps 14 by intermediate flaps 16, forming a continuous, closed strip of material. The flaps 14 are folded up vertically, the flaps 16 and 10 glued thereto and to each other. In McElwee the flaps 6 are folded against the bottom, lying down, not standing up.

In McElwee only the one top flap 7 is glued to the opposite wall. The flaps 22, 23 are not provided with glue, as can be seen in fig. 2. This blank is a blank that is glued to the form of fig. 2 and then sent to the end user, who sets it up, fills it with bottles and subsequently closes it by folding the lid 7 over the flaps

and bottles. Therefore, first of all there is only one flap that can be seen as a "top flap" and that is not attached to the upper flaps (or vice versa).

In the present invention the score lines 30 for the top flaps extend lower (closer to the bottom panel 2) than the score lines 34 attaching the flaps 12 to the flaps 10A, B. This means that the panels 8 (between score lines 30, 32) can be tilted slightly, further enhancing the strength of the package and thus allowing reduction of the material thickness, which is a very important feature in packaging. Moreover, as one can directly see from the drawings of McElwee compared to the drawings of the present invention, the material use is maximized, the waste material minimized. All material is used, reducing the overall thickness of the cardboard without compromising the strength of the package. Moreover, the tilted panels allow easier access to the packages, for example when placed on pallets, because they leave some space between adjacent packages. By using the flaps 12 having a relatively large length, they will rest on top of the bottles packaged, further enhancing the supporting strength, which is important in placing packages on top of each other during transport and storage.

It should be noted that such flaps have not been shown in any way in the prior art, especially not in a package having all the other features as claimed. Therefore it is only with hindsight that it can be argued that it would have been obvious to provide for these relatively long flaps 12 and attach them to each other and/or attach flaps 6 over and to each other and/or to the flaps 12.

The Office action further refers to Sutherland. This is a totally different type of package. First of all, this has two layers of bottles, one on top of the other, with an intermediate sheet. In a blank for such package there are (as can be seen in fig. 5) five panels and flaps in a row, the outer-most 50 being a flap to be glued to the opposite panel 16. In this package the bottles are introduced through a side, after the package has been set up almost entirely (only leaving the side for entering the bottles open). Therefore there can be no vertically extending side flap because this would prevent sliding in the bottles. Since in this package the flap 50 is glued to the panel 16, there is no use whatsoever for top flaps as claimed in the present invention. Apart from the fact that the blank would not allow such flaps to be formed without adding unnecessary material and waste, these flaps cannot be folded and attached to the other flaps in the manner as discussed in the present invention, since at least at the insertion side for the bottles they can only be folded after the bottles have been placed, which would prevent use of the present invention. For these reasons it is clear that the present invention is not obvious over McElwee and/or Sutherland.

Since the prior art discussed above clearly does not teach or render obvious the present invention as now set forth in the claims, it is apparent that the claims now define over the prior art and are in condition for allowance, which is respectfully requested.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. VOB-38838.

Respectfully submitted,
PEARNE & GORDON LLP

By John P. Murtaugh
John P. Murtaugh, Reg. No. 64226

1801 East 9th Street, Suite 1200
Cleveland, Ohio 44114-3108
Phone: (216) 579-1700
Fax: (216) 579-6073

Date: 3-23-09